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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,352	11/21/2003	John R. Wall	3257-031853	3304
28289 7590 01/15/2008 THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219				
EXAMINER FERGUSON, MICHAEL P				
ART UNIT		PAPER NUMBER		
3679				
MAIL DATE		DELIVERY MODE		
01/15/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/719,352

Applicant(s)

WALL, JOHN R.

Examiner

Michael P. Ferguson

Art Unit

3679

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 1, 4, 6 and 12 are objected to because of the following informalities:

Claim 1 (line 2) recites "a rail". It should recite --a first rail--.

Claim 4 (line 1) recites "faceplate". It should recite --face plate--.

Claim 6 (line 1) recites "faceplate". It should recite --face plate--.

Claim 12 (line 2) recites "slot are adapted". It should recite --slot of the joining connector are adapted--.

Claim 12 (line 3) recites "slot are adapted". It should recite --slot of the joining connector are adapted--.

For the purpose of examining the application, it is assumed that appropriate correction has been made.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 2 (lines 2-3) recites the limitation "the rigid member". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, 6, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nellis (US 195,723) in view of Robbins, Jr. (US Re. 32,707) and Nye (US 3,552,613).

As to claim 1, Nellis discloses a fencing system, comprising:

a first rail consisting of wire, wherein the rail is rigid yet manually deformable in the absence of any assembly thereof with the fencing system;

a slotted connector **B** having a face plate with two slots defined by a tongue **b** projecting from the face in a planar surface thereof, the tongue separating the two slots, the connector having a front side and a rear side and also having a post attachment end;

a free end of the rail being disposed in the slotted connector so that the rail runs from the front side of the connector through a first slot nearest the post attachment end, around the tongue, and then back through the second slot; and

a post **A** to which the slotted connector is attached using a fastener **b'** (Figures 1, 2 and 5, column 1 lines 16-27).

Nellis fails to disclose a fencing system wherein the first rail consists of at least two metal wires ensheathed in a plastic web; and wherein the slotted connector has a

face plate with two slots formed within the face in a planar surface thereof, the connector including a substantially planar middle portion separating the two slots; a free end of the rail being disposed in the slotted connector so that the rail runs from the front side of the connector through a first slot nearest the post attachment end, around the middle portion, and then back through the second slot.

Robbins, Jr. teaches a fencing system wherein the first rail consists of at least two metal wires ensheathed in a plastic web; the plastic ensheathed wire providing for strong, high-visibility, aesthetically pleasing fence rail, which will not cut or gouge the hides of valuable livestock (Figures 1 and 2, column 1 line 67-column 2 line 30). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fencing system disclosed by Nellis wherein the rail consists of plastic ensheathed wire as taught by Robbins, Jr. in order to provide for a strong, high-visibility, aesthetically pleasing fence rail, which will not cut or gouge the hides of valuable livestock.

Nye teaches a slotted connector **16** having a face plate with two slots **17** formed within the face in a planar surface thereof, the connector including a substantially planar middle portion separating the two slots; a free end of a rail **14** being disposed in the slotted connector so that the rail runs from the front side of the connector through a first slot nearest the post attachment end, around the middle portion, and then back through the second slot; slotted connector **16** providing for quick, secure, adjustable tensioning of rail **14**, slots **17** tightly securing the rail at the desired tension (Figures 1-4, column 2 lines 27-34). Accordingly, it would have been obvious to one having ordinary skill in the

art at the time the invention was made to modify the fencing system disclosed by Nellis wherein the slotted connector has a face plate with two slots formed within the face in a planar surface thereof, the connector including a substantially planar middle portion separating the two slots, as taught by Nye in order to provide for quick, secure, adjustable tensioning of the rail, the slots tightly securing the rail at the desired tension.

As to claim 2, Nellis discloses a fencing system wherein the slotted connector **B** comprises return edges extending along opposing sides of the connector, the return edges extending perpendicularly from the face plate (return edges are constituted by the side edges defining the thickness of the faceplate; Figure 5).

As to claim 3, Nellis discloses a fencing system wherein the slotted connector **B** is attached to the post **A** using a fastener which permits the connector to pivot about the fastener (slotted connector **B** may pivot about the lower rivet prior to insertion of screw **b'**; Figure 1).

As to claim 4, Nellis discloses a fencing system wherein the face plate **B** comprises a throughhole adapted to receive the fastener (lower rivet; Figure 1).

As to claim 6, Nellis discloses a fencing system wherein the faceplate **B** includes a bend between the first slot and the post attachment end (Figure 5).

As to claim 7, Nellis discloses a fencing system wherein the connector **B** is made of steel (column 2 lines 16-21).

As to claim 9, Nellis fails to disclose a fencing system wherein the post is a wooden post with a circular cross section. Nellis does not disclose any structural or functional significance as to the specific cross sectional shape of the post.

The applicant is reminded that a change in the shape of a prior art device, wherein there is no structural or functional significance disclosed as to the specific shape of an element, is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fencing system disclosed by Nellis wherein the post has a circular cross section as Nellis does not disclose any structural or functional significance as to the specific cross sectional shape of the post, and as such practice is a design consideration within the skill of the art.

Robbins, Jr. teaches a fencing system wherein a post is a wooden post **16**; wood being a common fence material, fence composition being selected on the basis of initial and upkeep costs, durability, strength and aesthetic characteristics (Figure 1, column 4 lines 3-5). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fencing system disclosed by Nellis wherein the post is wooden as taught by Robbins, Jr. as wood is a common fence material, fence composition being selected on the basis of initial and upkeep costs, durability, strength and aesthetic characteristics.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nellis in view of Robbins, Jr. and Nye as applied to claim 1 above, and further in view of Cammack (US 4,526,348).

As to claim 5, Nellis fails to disclose a fencing system wherein the fastener is a lag bolt.

Cammack teaches a fencing system wherein a fastener is a lag bolt; the lag bolt providing the convenience of assembling the fencing system without having to first drill holes through the fence posts. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fencing system disclosed by Nellis in view of Robbins, Jr. and Nye wherein the fastener is a lag bolt as taught by Cammack in order to provide the convenience of assembling the fencing system without having to first drill holes through the fence posts.

8. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nellis in view of Robbins, Jr. and Nye as applied to claim 1 above, and further in view of Frew (US 5,644,822).

As to claims 10, 11 and 12, Nellis in view of Robbins, Jr. and Nye fails to disclose a fencing system including a slotted joining connector comprising a face plate with a first slot, a second slot, and a third slot, the joining connector having a front side and a rear side; and a second rail consisting of at least two metal wires ensheathed in a plastic web, with ends of the first and second rails being in abutting relationship to each other, wherein the first slot and the second slot of the joining connector are adapted to receive the abutting end of the first rail and the second slot and the third slot of the joining connector are adapted to receive the abutting end of the second rail.

Frew teaches a slotted joining connector **1** comprising a face plate with a first slot **12**, a second slot **14**, and a third slot **13**, the joining connector having a front side and a rear side; and first and second rails **10**, with ends of the first and second rails being in abutting relationship to each other, wherein the first slot and the second slot of the

joining connector are adapted to receive the abutting end of the first rail and the second slot and the third slot of the joining connector are adapted to receive the abutting end of the second rail; joining connector 1 enabling two adjacent rails to be easily and securely connected to one another, while enabling each rail to be independently tightened (Figures 1-6, column 1 lines 29-35 and 49-58). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fencing system disclosed by Nellis in view of Robbins and Nye to comprise a second rail in order to provide a sufficient length of railing material between two adjacent posts, and to comprise a joining connector as taught by Frew in order to enable two adjacent rails to be easily and securely connected to one another, while enabling each rail to be independently tightened.

Response to Arguments

9. Applicant's arguments, filed October 25, 2007, with respect to the rejection(s) of claim(s) 1-7 and 9-12 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Nellis (US 195,723) in view of Robbins, Jr. (US Re. 32,707) and Nye (US 3,552,613).

Conclusion

The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. The following patents show the state of the art with respect to slotted connectors:

Eby et al. (US 4,905,968) and Wilson, Jr. (US 4,866,218) are cited for pertaining to fencing systems comprising a rail, a slotted connector and a post.

McAndrews (US 5,011,349) and Sinclair (US 327,731) are cited for pertaining to slotted connectors comprising face plate with slots formed within the face in a planar surface thereof.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (6:30am-3:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MPF
01/10/08

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